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Attorneys for Defendants  
*The Vanguard Group, Inc. and Vanguard  
Marketing Corporation*

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Barbara Borchers, as Trustee and as attorney in  
fact and, and Betty D. Olson, as a Trustee of  
the Olson Living Trust,

Plaintiffs,

v.

The Vanguard Group, Inc. and Vanguard  
Marketing Corporation,

Defendants.

No. 08-02138-PHX-ROS

**ANSWER OF THE VANGUARD  
GROUP, INC.**

Defendant The Vanguard Group, Inc. responds to the allegations in Plaintiffs  
Barbara Borchers and Betty D. Olson's Complaint as follows:

1. The Vanguard Group states that it lacks knowledge sufficient to form a  
belief as to the truth of the allegations of Paragraph 1, and on that basis denies those  
allegations.

2. The Vanguard Group admits that it is incorporated in Pennsylvania, that it

1 is authorized to conduct business in Arizona, and that it conducts business in Arizona.  
2 The Vanguard Group states that the remaining allegations of Paragraph 2 are vague, and  
3 on that basis denies the remaining allegations of Paragraph 2.

4 3. The Vanguard Group admits that one or more Plaintiffs opened and  
5 maintained certain accounts. The Vanguard Group denies the remaining allegations of  
6 Paragraph 3.

7 4. The Vanguard Group states that it lacks knowledge sufficient to form a  
8 belief as to the truth of the allegations of Paragraph 4, and on that basis denies those  
9 allegations. To the extent that the allegations of Paragraph 4 are intended or have the  
10 effect of alleging any wrongful conduct on the part of The Vanguard Group, any such  
11 allegations are expressly denied.

12 5. The Vanguard Group denies the allegations of Paragraph 5.

13 6. The Vanguard Group denies the allegations of paragraph 6.

14 7. The Vanguard Group denies each and every allegation that is not  
15 specifically admitted in paragraphs 1-6 above.

#### 16 **Affirmative Defenses**

17 The Vanguard Group states the following defenses to the causes of action asserted  
18 in the Complaint without assuming the burden of proof where such a burden is otherwise  
19 on Plaintiffs pursuant to applicable substantive procedural law. In addition, The  
20 Vanguard Group notes that Plaintiffs fail to identify any cognizable cause(s) of action in  
21 the Complaint, and The Vanguard Group is therefore not on notice of any causes of  
22 action that Plaintiffs may intend to have alleged against The Vanguard Group. As a  
23 result, The Vanguard Group reserves the right to assert additional affirmative defenses as  
24 discovery proceeds in this matter.

25 A. Plaintiffs' Complaint fails to state a claim upon which relief may be  
26 granted.

1 B. Plaintiffs lack standing to assert claims against The Vanguard Group.

2 C. Plaintiffs' claims are barred, in whole or in part, by the applicable statute(s)  
3 of limitations.

4 D. Plaintiffs' claims against The Vanguard Group are barred because Plaintiffs  
5 were not injured by reason of any action by The Vanguard Group.

6 E. Plaintiffs' claims are barred in whole or in part by the doctrines of laches  
7 and unclean hands.

8 F. Plaintiffs' claims are barred in whole or in part because Plaintiffs' claimed  
9 injuries and damages were not legally or proximately caused by any acts or omissions of  
10 The Vanguard Group and/or were caused, if at all, by the conduct of third parties  
11 including, without limitation, the prior, intervening or superseding conduct of such third  
12 parties.

13 G. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to  
14 mitigate damages and/or failure to take necessary steps to avoid preventable  
15 consequences.

16 Dated: December 1, 2008

**PERKINS COIE BROWN & BAIN P.A.**

17  
18 By: /s/ Jacob C. Robertson

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**CERTIFICATE OF SERVICE**

☒ I hereby certify that on December 1, 2008, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

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Attorney for Plaintiffs

☐ I hereby certify that on \_\_\_\_\_, 2008, I served the attached document by [first class mail/hand delivery] on Judge \_\_\_\_\_, United States District Court of Arizona, 401 West Washington Street, Phoenix, Arizona 85003-2118.

☐ I hereby certify that on \_\_\_\_\_, 2008, I served the attached document by [facsimile/first class mail/hand delivery] on the following, who are not registered participants of the CM/ECF System: [insert attorneys' names and addresses here]

s/ Charlotte Couch

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